IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 79 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GAUTAM HARILAL GOTECHA - Appellant(s)
Versus
DCIT, INV. CIR - 1. - Opponent(s)

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Appearance :
MR KH KAJI for Appellant(s) : 1,MR MANISH K KAJI for Appellant(s) : 1,
MR MANISH R BHATT for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 11/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1 Heard Mr.K.H.Kazi, learned Advocate for the applicant and Mr.M.R.Bhatt, learned Senior Standing Counsel for the respondent.

ADMIT

2 The appellant has proposed as many as seven questions, however, the following proposed question is the question which would take care of the controversy between the parties and arises for determination:

"Whether, in the facts and under the circumstances of the case, the decision of the ITAT was not perverse in as much as firstly it does not consider the

arguments advanced on behalf of the Appellant and secondly the impugned order is not at all reasoned and speaking order, thirdly the impugned order is incoherent and vague and fourthly it does not deal with all the grounds raised challenging various additions on the merits ?"

3 In so far as assessee's challenge to issuance of authorisation of search and legality of search u/s.132 of the Income Tax Act,1961 (the Act) is concerned, it is not necessary to enter into any discussion as regards the same in this appeal in light of the fact that a separate petition being Special Civil Application No.14104 of 2005 has already been preferred by the assessee.

4 Mr.K.H.Kazi, learned Advocate appearing on behalf of the appellant has made a grievance that impugned order of Tribunal dated

18/11/2004 suffers from total non application of mind. In support of the submission it was pointed out that search under section 132 of the Act took place on 16/09/1997 and as a consequence the assessee called upon the respondent authority to furnish seized material which was voluminous, but the same came to be supplied only on 17/08/1999. That in the circumstances, till the point of time of receipt of material the assessee was not in a position to submit his return of income which came to be filed on 27/09/1999. The assessment was finalised on 30/09/1999 as the same was getting time barred.

Pointing out from the Tribunal's order it was submitted that Tribunal has wrongly stated that return of block assessment was not furnished, while in fact return had been filed by the assessee. Various grounds were raised before the Tribunal by the assessee but the Tribunal has not dealt with any of them except in respect of two

additions of Rs.59,000/- and Rs.90,000/-. He, therefore urged that, in the circumstances, impugned order of Tribunal requires to be quashed and set aside restoring appeal of the assessee to the file with a direction to the Tribunal to hear the same afresh after giving reasonable opportunity to both the sides to present their case.

5 Mr.M.R.Bhatt, learned Standing Counsel appearing on behalf of the respondent has very strenuously supported the impugned order of Tribunal.

6 As can be seen from impugned order of Tribunal in paragraph Nos. 1 and 2 of the order facts regarding the assessment being framed have been set out; paragraph No.3 reproduces the submissions made on behalf of the assessee, paragraph No.4 refers to submissions made by departmental representative. The finding of the Tribunal, if it can be termed to be a finding,

commences from paragraph No.5 of the impugned order and Tribunal reproduces relevant extract of the order of Commissioner (Appeals) pertaining to grounds 1 to 7 before Commissioner (Appeals). Thereafter, it confirms the finding regarding legality of search and goes on to hold that the challenge to the validity of authorisation and consequential search do not come within the jurisdiction of the Tribunal and hence the ground is not maintainable. What follows is supposed to be the finding recorded by the Tribunal. The same is reproduced hereunder :

> *“ xxx xxx In respect of income, not giving opportunity of being heard and violation of principle of natural justice and assessment is bad in law, we find that the notice under section 158BC was issued 4.2.98. The return of block assessment was not furnished but assessment was made and issued notice u/s.142(i) which served on*

4.6.99. The notice and questionnaires were issued and served to AO, therefore, we are of the view that AO and CIT(A) are justified in holding that the assessment was as per the law and proper opportunity was allowed. Therefore, we dismiss the appeal on this ground."

7 On a plain reading of the aforesaid extract of the order of the Tribunal it becomes apparent that the Tribunal is not aware of its duty. The appellate Tribunal is the final fact finding body in the hierarchy of appellate jurisdiction under the Act. Its order is supposed to reflect not only the facts and contentions of the rival parties before it, but the issues which arise for its consideration and the reasons for deciding the issues one way or the other. The present is a case where it cannot be stated that the Tribunal has followed the well settled position

while discharging its duty. The Tribunal has singularly failed in its duty. The order is not only cursory but if one may say so, is not an order at all. In the case of S.J. And S.P.Family Trust vs. Deputy Commissioner of Income Tax [2005] 277 ITR 557 (Guj) this Court was constrained to observe :

> *"Having heard the parties, and in the light of the facts narrated hereinbefore, it is apparent that the Tribunal has made short shrift of its duty to adjudicate. This Court has time and again, reiterated the procedure required to be adopted by the Tribunal so as to ensure that the order, which is an appealable order, reflects not only its conclusion, but the decision making process also. Reasons however brief are the soul and backbone of an*

order. In the absence of such reasons, which must be reflected on a reading of the order, it is not possible to state as to whether the Tribunal was aware as to what the controversy was before it, and what were the factors pro and con in relation to the said issue, and the reasons which ultimately weighed with the Tribunal for arriving at a decision".

8 Only by way of an illustration it is necessary to take note of the fact that the Assessing Officer himself in paragraph No.10 states :"The assessee has filed his block period return on 27.9.99 declaring undisclosed income of Rs.Nil", and yet the Tribunal states that the return of block assessment was not furnished. It is not necessary to multiply instances of non application of mind by the Tribunal. This Court

has been constrained to remind the Tribunal of its duties time and again, but one can only lament that the Tribunal, it appears, is not amenable to constructive suggestions. The Tribunal fails to appreciate the basic fact that by making such slipshod orders it only generates unwarranted litigation, apart from putting the parties to unwarranted hardship, harassment and cost for no fault of theirs. The Court can only hope that the Tribunal applies its mind and takes care in future to ensure that the approach of the Tribunal undergoes a change and it may regain its past glory.

9 In the result, the question is answered in the affirmative. The impugned order of the Tribunal suffers from vice of perversity is not a reasoned and speaking order, is incoherent and vague, and does not deal with all the grounds raised before it challenging various additions on

merits. The appeal is allowed accordingly. There shall be no order as to costs.

Sd/- Sd/-
(D.A.Mehta,J) (H.N.Devani, J)

m.m.bhatt